83-764

Office-Supreme Court, U.S.
FILED
NOV 4 1983
STEVAS,
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES CURRENCY TOTALLING $53,935.00

Defendant,

JORGE CRUZ RIVERA

Petitioner, Claimant,

v.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

STEVEN B. MUSLIN, LTD.
Attorney at Law
100 N. LaSalle Street
Suite 2510
Chicago, Illinois 60602
(312) 263-7249

DAVID T. CHERNEY
100 N. LaSalle Street
Suite 2510
Chicago, Illinois 60602
(312) 263-7249
Of Counsel

CHAS. P. YOUNG CHICAGO, INC.

QUESTION PRESENTED FOR REVIEW

Whether the holding of the United States Court of Appeals for Eleventh Circuit affirming the ruling of the District Court in the above captioned cause sets a new precedent allowing civil forfeitures under 21 U.S.C. §881(a)(6) based on mere suspicion rather than on probable cause.

PARTIES

All parties are named in the caption.

TABLE OF CONTENTS

	PAGE
Question Presented for Review	i
Parties	i
Table of Contents	ii
Table of Authorities	iii
Reported Decisions	1
Jurisdiction	2
Statement of the Case	2
Argument and Reasons for Allowing the Writ of Certiorari	6
Conclusion	11
Appendix	A
Judgment of United States Court of Appeal for Eleventh Circuit, affirming the District Court	A-1
Per Curiam Opinion of United States Court of Appeal for Eleventh Circuit, September 6, 1983	A-2
Opinion and order of Judge William C. O'Kelley, United States District Court for Northern District of Georgia, Atlanta Division	A-4
Excerpts of transcript of Trial of this cause before Honorable William C. O'Kelley, United States District Judge, March 23, 1982	A-12

TABLE OF AUTHORITIES

PAGE

United States v. *$364,960.00 In United States Currency*, 661 F.2d 319 (5th Cir. 1981) 7, 9

United States v. *One 1975 Ford F100 Pickup Truck*, 558 F.2d 755 (5th Cir.) 7

United States v. *One(1) 1971 Chevrolet Corvette Automobile*, 496 F.2d 210 (5th Cir. 1974) 7

United States v. *One 1978 Chevrolet Impala*, 614 F.2d 983 (5th Cir. 1980) 7

United States v. *One 1975 Mercedes*, 2805, 590 F.2d 196 (6th Cir. 1978) 7

United States v. *One Twin Engine Beech Airplane*, 533 F.2d 1106 (9th Cir. 1976) 7

United States v. *$83,320.00 In United States Currency and $40.00 In Canadian Currency*, 682 F.2d 573 (6th Cir. 1982) 8, 9

United States v. *One 1974 Porsche 911-S*, 682 F.2d 283 (1st Cir. 1982) 8, 9

United States v. *One 1974 Cadillac Eldorado*, 575 F.2d 344 (2nd Cir. 1978) 8, 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES CURRENCY TOTALLING $53,935.00
Defendant,

JORGE CRUZ RIVERA
Petitioner, Claimant,

v.

UNITED STATES OF AMERICA
Respondent.

PETITIONER FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Jorge Cruz Rivera, Petitioner, respectfully asks that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit in the United States of America, Plaintiff-appellee, Cross-Appellant v. United States Currency totalling $53,935.00. Defendant, Jorge Cruz Rivera, Claimant-appellant, Cross-Appellee, No. 82-8299, which affirmed the ruling of the United States District Court for the Northern District of Georgia forfeiting to the government the currency seized from claimant pursuant to 21 United States Code Sec. 881(a)(6).

REPORTED DECISIONS

The opinion of the United States Court of Appeals for the Eleventh Circuit, United States of America v. United States Currency totalling $53,935.00, defendant and Jorge Cruz Rivera, claimant was a per curiam opinion and is not yet reported, a copy of the opinion appears as an appendix to this

petition. The opinion of the district court is not reported, a copy of the opinion appears as an appendix to this petition.

JURISDICTION

On December 22, 1980, the government seized $53,935.00 in United States currency from Jorge Cruz Rivera. Pursuant to 21 U.S.C. Section 881(a)(6), the government instituted forfeiture proceedings. Mr. Rivera filed a claim for possession of the currency on May 18, 1981. Trial was held on March 23, 1982. The judgment of the United States District Court for the Northern District of Georgia, Atlanta Division in favor of the government was entered on March 30, 1982. The judgment of the United States Court of Appeals for the 11th Circuit affirming the District Court was entered on September 6, 1983. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

At approximately 9:00 A.M. on December 22, 1980, two people, a man and a woman, approached the Delta Airlines ticket counter in the main terminal of the Atlanta airport and asked for tickets on the next flight to Miami. Delta ticket agent, George Herrera testified that they were of obvious Hispanic origin, appeared disheveled, and were in somewhat of a hurry.

The two people, identified as Jorge Cruz Rivera and Elvira Cordero, sought to apply the value of two unused Chicago to Miami tickets to the purchase of tickets to Miami. The next flight to Miami left at 9:30 A.M.. Mr. Herrera informed Rivera and Cordero that to apply the value of the tickets toward the purchase of the new tickets would take some time. At that point, apparently concerned about making the 9:30 flight, Rivera and Cordero asked if they could pay for the tickets with cash. Rivera produced a large number of bills from which he intended to pay for the tickets.

Herrera advised the subjects that company policy required passengers to produce identification when cash is used to pay for tickets. Herrera's supervisor, Mr. Pate, was called to the scene and advised that the subjects fit the F.A.A.'s hijacker profile.

At the trial, on cross-examination, Mr. Herrera conceded that there was nothing unusual about the passengers wanting to buy tickets to Miami or being disheveled or being Hispanic. He also admitted that its not abnormal for passengers to be concerned about catching a flight which was due to leave shortly.

Pate had a discussion with Rivera and Cordero approximately 6-8 feet away from where Herrera was standing. Pate asked the two subjects to produce identification and they refused. Rivera and Cordero then began conversing in Spanish. Pate walked back to where Herrera was standing and informed Herrera that the subjects would not be accepted for transportation. Herrera informed Pate that he overheard Cordero say to Rivera in Spanish "we are going to be searched and we need to be careful, we need to get rid of this".

Cordero then asked Herrera where the ladies restroom was and left in that direction. Rivera then told Pate he would pay for the tickets with a Carte Blanche credit card and Pate told Herrera to prepare the tickets. A check of the credit card revealed it was issued to Jorge Cruz Rivera and was valid. Pate observed Cordero discard some items into a trash box on the way to the restroom and then return to the ticket counter without using the restroom. Pate had the trash box seized and observed it contained pieces of baggage tape, remnants of a claim stub, what appeared to be a ladies compact and a cellophane wrapper with a white powder in it. This box and its contents were then taken to Pate's office.

Rivera having finally purchased the tickets to Miami, checked his bag and 2 attache cases. Both Rivera and Cordero were searched and no weapons or narcotics were

found. Pate then accompanied them to the concourse area. On the way to the concourse, Rivera and Cordero had a discussion in Spanish and then informed Pate they decided to fly Delta. They were issued a refund to the credit card account and were told where to reclaim their baggage.

Pate called the DEA airport field office and asked for an agent to meet him at his office in the main terminal. Agent Chapman met with Pate at his office and examined the contents of the trash box Pate had retrieved. Pate did not testify that he could describe what Cordero apparently discarded. He did testify that the box and its contents were in his locked office for 30 minutes and other people could have had access to it, but the box and its contents were admitted into evidence over claimants objection.

Agent Chapman examined the contents of the trash box and concluded the white powder substance was cocaine and a field test confirmed his conclusion. Pate related the earlier events to Chapman. Chapman proceeded to the baggage area, had Cordero arrested and asked Rivera to submit to a search of his baggage and person.

Agent Chapman asked Rivera if he was carrying any narcotics on his person or in his luggage, and Rivera responded that he was not. Rivera said that he had nothing to hide and that he did not mind. One case had clothes, toiletries and a brown paper bag. Agent Chapman inquired as to the contents of the brown paper bag and Rivera said it contained $52,000.00-$56,000.00 in cash. When asked why he was carrying such a large amount of cash, Rivera told Chapman it was the proceeds of jewelry sold on consignment. Rivera produced a card with the name of a jewelry company located in Miami.

As no contraband was found on Rivera he was not arrested and was allowed to leave. Agent Chapman seized the funds contained in the bag but returned approximately $4,180.00 found on Rivera's person. Chapman testified that Rivera had cooperated fully and that he gave Rivera back $4,180.00

found elsewhere on his person because he was "sort of being nice that day".

A chemical analysis of the seized cocaine revealed it weighed approximately 5 grams and was 83% pure. At the trial, Agent Chapman speculated that the 83% strength meant the cocaine had not been mixed for resale. He theorized it was the remainder of a larger amount that had already been sold. That because Chicago and Miami were known drug trafficking cities and because Rivera's travel pattern and the amount of cash he was carrying fit the drug courier profile, Agent Chapman theorized that a drug sale occurred in Chicago and the seized money was the proceeds of said sale.

Chapman supported this claim by claiming that a kilo of cocaine sold for $50,000.00-$60,000.00 in December 1980, however, he could not recall negotiating any sale at that time or offer any other basis for how said price was determined.

Chapman also admitted that many other cities beside Miami and Chicago are known for drug trafficking including, Los Angeles, Detroit, New York, Atlanta, Dallas, Houston and New Orleans.

The claimant rested without putting on any evidence indicating a local criminal action pending against claimant necessitated his taking the 5th Amendment.

The District Court held that the series of events in its entirety suggested as sufficient nexus between the currency seized and trafficking in cocaine by Rivera and Cordero to support probable cause to believe the currency was furnished in exchange for a controlled substance or were proceeds traceable to a drug transaction. The court concluded that:

> a. Rivera and Cordero were traveling together and were engaged in a joint venture concerning the discarded cocaine.

b. That the amount of currency being carried was a large amount and Rivera's possession of it was unexplained.

c. Cordero and Rivera had 3 bags, a suitcase and 2 briefcases. The money was found in a briefcase and there was no evidence to show that the briefcase belonged to Rivera instead of Cordero except that he was carrying it.

The Appellate Court affirmed the District Court's ruling per curiam.

ARGUMENT AND REASONS FOR ALLOWING THE WRIT OF CERTIORARI

The petitioner contends the District Court and the Appellate Court erred in its findings that the government sustained its burden of showing probable cause.

The petitioner contends this error establishes a precedent that reduces the standard required to prove probable cause from a reasonable ground for belief of guilt to one of a showing of mere suspicion. 21 U.S.C. 881(a)(6) provides in part:

> a. The following shall be subject to forfeiture to the United States and no property right shall exist in them:
>
> (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this sub-chapter, all proceeds traceable to such an exchange and all monies, negotiable instruments and securities used or intended to be used to facilitate any violation of this sub-chapter.

According to the legislative history, it is the intent of the above statute that property be forfeited only if there is a "substantial connection" between the property to be forfeited and the underlying criminal activity which the statute seeks

to prevent. Joint Explanatory Statement of Title II and III, reprinted in (1978) U.S. Code Cong. & Admin News 9518, 9522; *United States* v. *$364,960.00 in United States Currency*, 661 F. 2d 319, 323 (5th Cir 1981). (Former Fifth Circuit Unit B).

Under a 21 U.S.C. 881 forfeiture action, the government's only burden of proof is showing probable cause that the seized currency was money used in a manner proscribed by the statute, 19 U.S.C. 1615; *United States* v. *$364,960.00 in United States Currency*, supra; *United States* v. *One 1975 Ford F100 Pickup Truck*, 558 F 2d755 (5th Cir.) (per curiam), cert. denied, 434 U.S. 1064 (1977); *United States* v. *One (1) 1971 Chevrolet Corvette Automobile*, 496 F 2d 210 (5th Cir, 1974).

The definition of probable cause in forfeitures has been held to be the same standard of proof as is applicable elsewhere "reasonable ground for belief of guilt, supported by less than prime facie proof but more than mere suspicion." *United States* v. *$364,960.00 in United States Currency*, 661 F. 2d at 323; *United States* v. *One 1978 Chevrolet Impala*, 614 F. 2d 983, 984 (5th Cir 1980); *United States* v. *One 1975 Mercedes*, 280S, 590 F. 2d 196, 199 (6th Cir 1978); *United States* v. *One 1975 Ford F100 Pickup Truck*, 558 R. 2d at 75; *United States* v. *One (1) 1971 Chevrolet Corvette Automobile*, 496 F. 2d at 212.

If the government makes a sufficient showing of probable cause then the burden shifts to the claimant to show, by a preponderance of the evidence, that the money seized is not subject to forfeiture. *United States* v. *$364,960.00 in United States Currency*, 661 F 2d at 324. Whether the requisite probable cause existed for the government to have met its burden is a question of law for the court to decide. *Beck* v. *Ohio*, 379 U.S. 89 (1964); *United States* v. *$364,960.00 in United States Currency*, 661 F. 2d at 323; *United States* v. *One Twin Engine Beech Airplane*, 533 F 2d 1106, 1108 (9th Cir 1976).

In United States v. *364,960.00 in United States Currency*, the court found that the officers had a reasonable ground for belief, or more than mere suspicion that there was a substantial connection between the currency seized and narcotics

trafficking where two illegal aliens from Columbia were apprehended in an apartment in which they claimed no interest with narcotics, narcotics paraphernalia, guns and the $364,960.00. Said illegal aliens later attempted to escape.

In *United States* v. *$83,320.00 in United States Currency and $40.00 in Canadian Currency*, 682 F.2d 573 (6th Cir. 1982), the court found that the government met its burden of showing probable cause where the police had observed the claimant for several years for narcotics activity and pursuant to arrest and search warrants found large quantities of heroin and cocaine as well as the seized currency in claimant's house.

In *United States* v. *One 1974 Porsche 911S*, 682 F.2d 283 (1st Cir. 1982) the court found that the government met its burden of showing probable cause where DEA agents observed the claimant drive the seized car into a parking lot where an accomplice obtained a bag from the car and that bag was later sold to DEA agents. The bag contained narcotics.

In *United States* v. *One 1974 Cadillac Eldorado*, 575 F.2d 344 (2nd Cir. 1978) the court found that the government had not met its burden of showing probable cause where in the presence of DEA agents, claimant walked over to the seized Cadillac that has just pulled up containing his wife, children and driven by his brother-in-law. The DEA agents testified claimant was seen reaching into the car. Immediately after claimant handed the narcotics to the agent. The government further argued that since the drug dealer who was cooperating with them was familiar with the Cadillac, it must have been used to facilitate previous drug transactions. The court rejected that reasoning.

In the instant cause, the claimant was searched twice and had no narcotics in his possession or in his luggage. Ms. Cordero was observed throwing something into a trash box that was later claimed to be the cocaine allegedly retrieved from the trash box. The amount of cocaine found was less

than 5 grams and would indicate it was intended for personal use.

Mr. Rivera did not interfere with Ms. Cordero's arrest, he cooperated fully with Agent Chapman and voluntarily allowed his luggage to be searched. The money was found in two paper bags not divided or arranged in any particular manner. When asked about the money, Mr. Rivera immediately explained that the money was from sales of jewelry on consignment in a Chicago hotel meeting room and produced a business card of the jewelry firm to which he claimed to be associated. The agent returned $4,000.00 of the money to Rivera because he was sort of being nice that day. Agent Chapman said that after the interview with Rivera about the source of the money, that he felt it could have come from anywhere, but his gut feeling was it came from narcotics. There was no other actual evidence of drug activity, only the mere hypothetical suspicions of a DEA Agent.

The court concluded that Rivera and Cordero were engaged in a joint venture concerning the discarded cocaine and when considered in light of the large amount of unexplained currency was a sufficient nexus for the substantial connections necessary to find probable cause.

When one compares the factual situations of the above cited cases one sees the spectrum of the definition of probable cause. At the "reasonable belief of guilt" end of the spectrum are *United States* v. *$364,960.00 in United States Currency*, *United States* v. *$83,320.00 in United States Currency et al*, more towards the middle is *United States* v. *One 1974 Porsche 911S* and on the other side at the "mere suspicion" end is *United States* v. *One 1974 Cadillac Eldorado*.

When viewed in light of the above cases it is obvious the instant cause belongs with the 1974 Eldorado. The theories advanced by the government are based on mere suspicion. There are no facts to support a conclusion the money was the proceeds of illegal narcotics trafficking only the guessing of the DEA Agent. The only connection to drugs is the fact

that Cordero allegedly disposed of a small amount in her possession that would be indictive of personal use.

The source of the money is not unexplained as the court concluded. The source of the money was explained by Rivera immediately when asked. The government does not offer any prior surveillance, knowledge or contact by its agents as to drug activity by Rivera to support the theories they advanced.

The effect of the Appellate Court's ruling is to rewrite the law of probable cause. This is the same law cited by the District Court as the basis of its opinion. The ruling sets a new precedent for the definition of probable cause reducing it to one of a showing of only mere suspicion. The Supreme Court has never ruled on this issue and should hear this matter to clarify the law. Accordingly the ruling of the United States Court of Appeals for the Eleventh Circuit should be reviewed and reversed.

CONCLUSION

Wherefore, Petitioner, Jorge Cruz Rivera, respectfully asks that a Writ of Certiorari issue to the United States Court of Appeals for the Eleventh Circuit to review the judgment in United States of America v. United States Currency totalling $53,935.00, Jorge Cruz Rivera, claimant No. C 81 487A and that upon review by this court that the finding of probable cause be reversed and remanded for a ruling in favor of Petitioner of no probable cause.

Respectfully submitted, Jorge Cruz Rivera, Petitioner.

By: /s/ STEVEN B. MUSLIN

Steven B. Muslin
Attorney

STEVEN B. MUSLIN, LTD.
Attorney at Law
100 N. LaSalle Street
Suite 2510
Chicago, Illinois 60602
(312) 263-7249

DAVID T. CHERNEY
100 N. LaSalle Street
Suite 2510
Chicago, Illinois 60602
(312) 263-7249
Of Counsel

APPENDIX

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 82-8299

D.C. Docket No. C81-487A

D STATES OF AMERICA,

Plaintiff-Appellee,
Cross-Appellant,

sus

TED STATES CURRENCY TOTALLING
,935.00,

Defendant,

GE CRUZ RIVERA,

Claimant-Appellant,
Cross-Appellee.

SEP 29 1983

Appeal from the United States District Court for the Northern District of Georgia

fore JOHNSON and HENDERSON, Circuit Judges, and ALLGOOD*, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United tes District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by Court that the order of the District Court appealed from, in this cause be, and the e is hereby, AFFIRMED;

It is further ordered that claimant-appellant/cross-appellee pay to plaintiff-appellee/ s-appellant, the costs on appeal to be taxed by the Clerk of this Court.

September 6, 1983

norable Clarence W. Allgood, U.S. District Judge for the Northern District of bama, sitting by designation.

A True Copy
Attest:
Clerk, U.S. Court of Appeals, Eleventh Circuit
By Joyce Linker
Deputy Clerk
Atlanta, Ga. SEP 28 1983

UED AS MANDATE: SEP 28 1983

DO NOT ...

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

RECEIVED ... OFFICE

... CLERK

Deputy Clerk

NO. 82-8299

C 81-487-A

UNITED STATES OF AMERICA,

Plaintiff-Appellee,
Cross-Appellant,

versus

UNITED STATES CURRENCY TOTALING $53,935.00,

Defendant,

JORGE CRUZ RIVERA,

Claimant-Appellant,
Cross-Appellee.

Appeals from the United States District Court
for the Northern District of Georgia

(September 6, 1983)

Before JOHNSON and HENDERSON, Circuit Judges, and ALLGOOD*, District Judge.

PER CURIAM:

*Honorable Clarence W. Allgood, U.S. District Judge for the Northern District of Alabama, sitting by designation.

A True Copy
Attested:
Clerk, U.S. Court of Appeals, Eleventh Circuit
By: Joyce Larkin
Deputy Clerk
Atlanta, GA. SEP 8 1983.

The United States filed a complaint in the United States istrict Court for the Northern District of Georgia seeking orfeiture of currency seized from Jorge Cruz Rivera pursuant o 21 U.S.C. §881(a)(6), which provides for the forfeiture of onies traceable to, intended for use, or used in the unlawful xchange of a controlled substance. The appellant, Rivera, ubsequently filed his claim for the currency. During the rial, three witnesses testified as to the circumstances of he seizure. Rivera neither testified nor offered any vidence in rebuttal. The district court entered judgment in avor of the United States, concluding that the government ad met its burden of proving probable cause that the currency as furnished in exchange for a controlled substance or was roceeds traceable to a drug transaction. The court then rdered forfeiture of the money.

Rivera appeals the order of forfeiture, urging that the istrict court erred in finding that there was probable cause o believe that there was a substantial connection between he seized currency and criminal activity. We find that the vidence before the district court was sufficient to stablish the necessary probable cause, and hold that the istrict court did not err in forfeiting the currency to the overnment.

A F F I R M E D.

Civ 32
(1/83)

JUDGMENT ON DECISION BY THE COURT

United States District Court

FOR THE

NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION FILE NO. C81-487A

UNITED STATES OF AMERICA

vs.

JUDGMENT

UNITED STATES CURRENCY TOTALLING
$53,935.00

This action came on for ~~hearing~~ before the Court, Honorable WILLIAM C. O'KELLEY United States District Judge, presiding, and the issues having been duly ~~tried~~ and ~~a~~ decision having been duly rendered,

It is Ordered and Adjudged that judgment be entered in favor of the plaintiff UNITED STATES OF AMERICA and against the defendant UNITED STATES CURRENCY TOTALLING $53,935.00, and that the FIFTY THREE THOUSAND, NINE HUNDRED THIRTY FIVE and NO/100 dollars, ($53,935.00) be forfeited to the United States pursuant to 21 U.S.C. §881(a)(6).

order to stay
pmt. &c.

Dated at Atlanta, Georgia, this 30th day of March, 19 82.

FILED AND ENTERED IN CLERK'S OFFICE
March 30, 1982
BEN H. CARTER, CLERK

BY: Carol O'Donnell
Carol O'Donnell, deputy clerk

BEN H. CARTER
Clerk of Court

BY: Carol O'Donnell
Carol O'Donnell, deputy clerk

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta
MAR 30 1982
JAMES E. BARNES, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	
VERSUS	:	CIVIL ACTION NO. C-81-487-A
	:	
UNITED STATES CURRENCY TOTALLING $53,935.00, JORGE CRUZ RIVERA, Claimant	:	

O R D E R

In an incident which occurred at the Hartsfield International Airport in Atlanta, Georgia, the government seized $53,935.00 in United States currency from a Mr. Jorge Cruz Rivera. Contending that the currency was subject to forfeiture under 21 U.S.C. § 881(a), the government arrested the currency and instituted this proceeding. Mr. Rivera filed a claim for possession of the currency on May 18, 1981. A bench trial was held on this issue on March 23, 1982. The government presented evidence including testimony by four witnesses. Claimant Rivera put on no evidence. After hearing the evidence and arguments for both sides, the court took the matter under advisement. This order shall constitute the findings of fact and conclusions of law required by Fed.R.Civ.P. 52(a).

FINDINGS OF FACT

According to the uncontradicted testimony, the seizure grew out of the following circumstances. On December 22, 1980, at around 9:00 a.m. claimant Jorge Cruz Rivera and a female companion, Elvira Cordero, approached the Delta Airlines ticket counter at Hartsfield Airport. Delta ticket agent George Herrera was at the counter. Rivera and Cordero inquired about the next trip to Miami and were told that the earliest flight would depart around 9:30. They then produced tickets for Chicago to Miami and asked to

pieces of baggage tape, remnants of baggage stubs and other trash. Pate continued to follow Cordero but she never entered the restroom. Instead, she returned to the ticket counter where she and Rivera then used a Carte Blanche credit card to purchase their tickets. Mr. Pate permitted the purchase after the credit cards were produced. They checked their baggage, one small blue suitcase, and then agreed to be searched. After the search was completed without revealing anything dangerous, Pate and another Delta employee, Ms. Susan McCallum, accompanied Rivera and Cordero to the concourse. Pate testified they were nervous and conversed continuously in Spanish. Pate instructed another Delta employee to secure the trash box in his office and to remain there with it.

After reaching the concourse area, Rivera and Cordero informed Mr. Pate they had decided not to fly Delta. Mr. Pate arranged for their baggage to be retrieved and then took them to a ticketing counter where a refund was made. At that point Mr. Pate called the Drug Enforcement Agency (DEA) office at the airport and spoke to Agent Gerald Chapman.

Chapman met Pate at Pate's office where Pate recounted the events just described. Chapman looked at the contents of the cardboard box, opened the compact and cellophane bag and found a white powdery substance of which the odor and texture led him to believe it was cocaine. He then performed a field test which resulted in a positive indication of cocaine.

Chapman subsequently called a female agent and went to the baggage area where Rivera and Cordero were awaiting their luggage. Chapman observed them there for a few minutes, noting their nervousness again. Cordero and Rivers unaccountably retrieved three pieces of baggage[1] although they had checked only one. Chapman then arrested Ms. Cordero for violation of the

Controlled Substances Act, and advised her of her rights. Rivera was not arrested; however, Chapman inquired of him whether he would submit to a search of his person and his luggage. Rivera consented.

Chapman took Rivera and Cordero to the Atlanta precinct station at the airport where both were searched again. A search of a briefcase held by Rivera exposed two brown paper sacks of currency consisting of small denomination, used bills which a later count revealed to total nearly $54,000.00. Mr. Rivera was also carrying over $4,000.00 in cash on his person. When the agent questioned Mr. Rivera about the origin of the money, Rivera maintained that he had made consignment sales of jewelry in Chicago and that the money was the proceeds of those sales. He could not produce receipts, however, and had no other jewelry with him, as would be expected of a jewelry salesman. As evidence of his explanation, he had only a sales card with the name of his purported employer, a jewelry company. The card did not contain his name. After questioning Mr. Rivera, Agent Chapman called Special Agent Paul Markonni and an Assistant United States Attorney who authorized Chapman to seize $53,935.00 of the currency. Chapman did return to Rivera approximately $4,000.00 found on his person.

At trial, DEA forensic chemist Wilmer O. Kiser testified to subsequent tests he made on the white powdery substance. He concluded that the substance was indeed cocaine hydrochloride of 83% purity. The amount seized weighed 5.537 grams. He testified that cocaine of that purity was probably uncut cocaine.

CONCLUSIONS OF LAW

Section 881(a)(6) of Title 21, U.S.C., subjects to forfeiture any money "furnished or intended to be furnished by any

person in exchange for a controlled substance ..., all proceeds traceable to such an exchange, ... and [money] ... intended to be used to facilitate any violation of [the Controlled Substances Act]." The legislative history of the statute indicates that forfeiture is warranted only where there is a "substantial connection" between the property and the criminal activity addressed by the Act. Joint Explanatory Statement of Titles II and III, reprinted in [1978] U.S. Code Cong. & Admin. News 9518, 9522; United States v. $364,960.00 in United States Currency, 661 F.2d 319, 323 (5th Cir. 1981). (Former Fifth Circuit Unit B).[2]

In its forfeiture action the government has the burden of proof of probable cause only. 19 U.S.C. § 1615; United States v. $364,000.00 in United States Currency, supra; United States v. One 1975 Ford F100 Pickup Truck, 558 F.2d 755 (5th Cir.) (per curiam), cert. denied, 434 U.S. 1064 (1977); United States v. One (1) 1971 Chevrolet Corvette Automobile, 496 F.2d 210 (5th Cir. 1974). The probable cause that must be shown is "a reasonable ground for belief of guilt supported by less than prima facie proof but more than mere suspicion." United States v. One 1975 Ford F100 Pickup Truck, 558 F.2d at 756; United States v. One (1) 1971 Chevrolet Corvette Automobile,, 496 F.2d at 212. Accord, United States v. $364,960.00 in United States Currency, 661 F.2d at 323. Once the government's burden is met, however, the burden shifts to the claimant to rebut. United States v. $364,960.00 in United States Currency, 661 F.2d at 324. Whether probable cause existed for the seizure is a matter of law for the court. Beck v. Ohio, 379 U.S. 89 (1964); United States v. $364,960.00 in United States Currency, 661 F.2d at 323. Accord, United States v. One Twin Engine Beech Airplane, 533 F.2d 1106, 1108 (9th Cir. 1976).

The court concludes that in this case the government sustained its burden of showing probable cause. The series of events in its entirety suggests a sufficient nexus between the currency and trafficking in cocaine carried out jointly by Cordero and Rivera to support probable cause to believe the currency was furnished in exchange for a controlled substance or was proceeds traceable to a drug transaction.

It can be concluded from the conversations between Rivera and Cordero at the ticket counter, the purchase of the tickets together and the fact that they were traveling together that Rivera and Cordero were engaged in what might be termed a joint venture concerning the discarded cocaine. When that joint enterprise is considered in light of the large amounts of unexplained currency found on Rivera, a sufficient nexus exists to support probable cause that a substantial connection existed between the money and trafficking in a controlled substance.

Rivera and Cordero were traveling together and they had three bags, one small blue suitcase and two briefcases. The money was found in the briefcase. There was no evidence to show that the briefcase belonged to Rivera instead of Cordero other than the fact he was carrying it. Certainly if the bag had been in the possession of Cordero, the court could permissibly infer that the money found in it was proceeds traceable to an exchange for a controlled substance. Since Cordero and Rivera were obviously acting in concert, the court has little difficulty in finding that the large amount of unexplained cash found in Rivera's possession supported a finding of probable cause to believe the money contained in the briefcase he was holding was currency furnished in exchange for a controlled substance or proceeds traceable to such an exchange. As the Second Circuit has stated in a case charging a defendant with participating in a drug trafficking conspiracy,

> [T]he possession of large amounts of unexplained cash in connection with evidence of narcotics trafficking on a large scale is similar to the possession of special means, such as tools or apparatus, which is admissible to show the doing of an act requiring those means.

United States v. Magnano, 543 F.2d 431, 437 (2d Cir. 1976), cert. denied, 429 U.S. 1091 (1977) (quoting United States v. Tramunti, 513 F.2d 1087, 1105 (2d Cir.), cert. denied, 423 U.S. 832 (1975)), (cited with approval in United States v. $364,960.00 in United States Currency, 661 F.2d at 324). In United States v. $364,960.00 in United States Currency, supra, the large amount of unexplained currency and the surrounding circumstances similarly led that court to infer a connection with illicit trafficking in cocaine.[3]

The government met its burden of showing probable cause and there was no rebuttal at all. In fact, claimant put on no evidence. The court concludes that the forfeiture is justified under the circumstances.

CONCLUSION

Therefore, it is ordered that the defendant currency, $53,935.00, is forfeited to the United States pursuant to 21 U.S.C. § 881(a)(6). Rivera's claim against the money is denied. The clerk is directed to enter judgment for plaintiff.

IT IS SO ORDERED this 30th day of March, 1982.

WILLIAM C. O'KELLEY
United States District Judge

1 It was speculated at trial that the additional two bags had been checked outside the terminal. It was never satisfactorily explained, however, how Delta knew to retrieve three bags from the airplane instead of the one checked by Mr. Rivera at the counter.

2 Although it is unclear whether former Fifth Circuit decisions handed down after September 30, 1981, are binding on courts in the present Eleventh Circuit, see Bonner v. City of Prichard, Alabama, 661 F.2d 1206 (11th Cir. 1981), former Fifth Circuit decisions of Unit B are highly persuasive authority.

3 Defendants cite United States v. Wright, 610 F.2d 930 (D.C. Cir. 1979) for the proposition that the nexus between the events at the Atlanta airport and the $53,935.00 is too attenuated to support probable cause to believe the money was proceeds of or used in exchange for or to facilitate a drug transaction. The court finds Wright distinguishable on several grounds. First, Wright involved a motion for return of property after indictments were dismissed. That motion called for a different burden of proof than is required in a forfeiture action under section 881. Claimants in Wright were required to show a reasonable presumption of entitlement. 610 F.2d at 941. In contrast, in the present case, the burden of proof requires the government to show probable cause and the claimant to rebut. Claimant here put on no evidence. Second, in Wright the money was found in a residence. The court can speculate and think of some reason for keeping large amounts of cash in one's residence, perhaps. The court can conceive of no reason, however, to carry almost $54,000.00 in cash in an attache case that is checked at the airport other than to avoid detection of some illicit activity. Finally, the court in United States v. $364,960.00 in United States Currency, supra, distinguished Wright on a number of grounds which also convince this court that the holding of Wright is factually inapplicable to the present case.

MS. McCLURE: JUST ONE, THE CHEMIST, YOUR HONOR.

THE COURT: HOW MANY WITNESSES DO YOU HAVE?

MR. MUSLIN: YOUR HONOR, IT DEPENDS ON THE POSITION AT THE END OF THE STATE'S CASE. PROBABLY ONE. POSSIBLY NONE.

THE COURT: ALL RIGHT, WE WILL RECESS UNTIL 2:00 O'CLOCK.

(THEREUPON, COURT WAS RECESSED AT 1:00 O'CLOCK, P. M.)

- - -

THE COURT: LET THE WITNESS COME BACK TO THE STAND FOR CROSS-EXAMINATION.

CROSS-EXAMINATION

BY MR. MUSLIN:

Q AGENT CHAPMAN, YOU HAVE BEEN AN AGENT FOR TEN AND A HALF YEARS?

A YES, I HAVE.

Q AND APPROXIMATELY -- YOU HAVEN'T WORKED IN THE MIAMI AREA FOR EIGHT AND A HALF OF THOSE TEN AND A HALF YEARS, IS THAT CORRECT?

A I HAVE NOT BEEN ASSIGNED TO MIAMI BUT I HAVE WORKED DOWN THERE SINCE THEN.

Q BUT YOU HAVEN'T, FOR THE LAST EIGHT YEARS, YOU HAVEN'T BEEN ASSIGNED THERE?

A I HAVEN'T BEEN ASSIGNED THERE.
Q OKAY. BACK TO --
A EXCEPT TEMPORARY DUTY. YOU KNOW, T.D.Y.
Q DO YOU RECALL THE DATE WE ARE TALKING ABOUT, 12-22-80?
A WELL, I REMEMBER THE INCIDENT. IT WAS RIGHT BEFORE CHRISTMAS.
Q WAS THE AIRPORT BUSY AT THAT TIME?
A USUALLY THAT TIME OF YEAR, MOST ANY HOLIDAYS THE AIRPORTS ARE BUSY, BUT THE CLOSER IT GETS TO CHRISTMAS DAY, ITSELF, MOST PEOPLE, YOU KNOW -- I THINK SCHOOL WAS OUT TWO WEEKS PRIOR TO THAT.
Q THIS WAS THREE DAYS BEFORE CHRISTMAS.
A YES, I KNOW. YOU CAN SAY THEY USUALLY HAVE NORMALLY HEAVY TRAFFIC.
Q YOU SEARCHED MR. RIVERA? DID YOU SEARCH HIM?
A YES, I DID.
Q DID YOU FIND ANY NARCOTICS?
A NO, I DID NOT.
Q DID YOU FIND ANY NARCOTICS IN ANY OF HIS LUGGAGE?
A NO, I DID NOT.
Q WAS IT REPORTED TO YOU THAT SOMEONE SEARCHED MR. RIVERA BEFORE YOU ARRIVED?
A IT WAS REPORTED TO ME THAT HE DID CONSENT TO A SEARCH.

Q AND WAS IT REPORTED TO YOU THAT THAT SEARCH ALSO REVEALED NOTHING OF ANY NARCOTICS NATURE OR ANY OTHER THING FOR THAT MATTER ON HIS PERSON?

A IF IT DID, THEY DIDN'T TELL ME.

Q WHEN YOU WENT TO THE LUGGAGE AREA, YOU WERE ARMED WITH THE FOLLOWING INFORMATION, RIGHT? YOU WERE TOLD THAT MR. RIVERA WAS AN HISPANIC, CORRECT?

A DO YOU WANT ME TO ANSWER EACH ONE OF THEM?

Q YES.

A OKAY. YES, SIR.

Q AND YOU WERE TOLD THAT HE WAS WEARING JEANS, IS THAT CORRECT?

A A GENERAL DESCRIPTION, YES.

Q AND YOU WERE TOLD THAT HE PURCHASED A TICKET WITH A CREDIT CARD AFTER ATTEMPTING TO PAY CASH, IS THAT CORRECT?

A WELL, THAT HE HAD PURCHASED A -- FINALLY INITIALLY -- YES.

Q PURCHASED A TICKET WITH A CREDIT CARD?

A YES.

Q AND YOU WERE TOLD HE REFUNDED THAT TICKET BECAUSE HE DIDN'T WISH TO FLY DELTA?

A HE DECIDED HE WASN'T GOING TO FLY.

Q AND YOU WERE TOLD HE MIGHT BE AT THE BAGGAGE AREA PICKING UP HIS BAGGAGE, IS THAT CORRECT?

A HE WAS ON HIS WAY BACK TO THAT PARTICULAR AREA TO

PICK UP HIS LUGGAGE.

Q ASIDE FROM THIS INFORMATION YOU WERE TOLD THAT A MS. CORDERO WAS OBSERVED THROWING SOMETHING INTO A BOX, IS THAT RIGHT?

A YES, I WAS.

Q AND YOU WERE SHOWN THE BOX?

A YES.

Q AND YOU FIELD TESTED WHATEVER WAS IN THE BOX, IS THAT CORRECT, AND IT TESTED POSITIVE POSSIBLE CONTROLLED SUBSTANCE, IS THAT CORRECT?

A THAT'S CORRECT.

Q AND THEN YOU WENT TO THE BAGGAGE AREA, IS THAT RIGHT? AFTER YOU WERE GIVEN THIS INFORMATION, YOU WENT TO THE BAGGAGE AREA, IS THAT RIGHT?

A RIGHT.

Q WHEN YOU GOT TO THE BAGGAGE AREA YOU SAW TWO PEOPLE WAITING FOR LUGGAGE, IS THAT RIGHT?

A AT THAT PARTICULAR BAY, YES.

Q AND THESE TWO PEOPLE WERE TALKING TO EACH OTHER?

A YES, THEY WERE.

Q AND THEY WERE WALKING WHAT YOU CALLED AROUND?

A WELL, THEY WERE STANDING THERE AND TALKING A LITTLE BIT AND THEN ONE WOULD WALK OFF AND THEN COME BACK AND LOOK AROUND.

Q IN THE MEANTIME THE LUGGAGE HAD NOT YET ARRIVED?

A THAT IS CORRECT.

Q WHEN THE LUGGAGE ARRIVED THEY TOOK THE LUGGAGE OFF THE CONVEYER BELT?

A THAT'S CORRECT.

Q AND YOU APPROACHED, ARRESTING MS. CORDERO, RIGHT?

A AS THEY STARTED OUT OF THE TERMINAL, YES.

Q AND THEN MR. RIVERA DIDN'T INTERFERE IN THE ARREST, DID HE?

A NO.

Q AND THEN YOU ASKED MR. RIVERA IF HE COULD, IF YOU COULD SEARCH HIS LUGGAGE, IS THAT RIGHT?

A I ADVISED HIM WHO I WAS AND --

Q AND YOU TOLD HIM HE HAD A RIGHT NOT TO HAVE HIS LUGGAGE SEARCHED, AND HE HAD A RIGHT TO HAVE AN ATTORNEY, ET CETERA, ET CETERA?

A RIGHT.

Q AND HE COOPERATED FULLY?

A THAT'S CORRECT.

Q AND HE TOOK HIS TWO BRIEFCASES AND YOU TOOK THE OTHER -- THE OTHER BAG WAS DETERMINED TO BELONG TO MS. CORDERO?

A THAT'S CORRECT.

Q AND HE TOOK THE TWO BRIEFCASES THEN AND HE FOLLOWED YOU OR YOU WENT TOGETHER TO THE PRECINCT, IS THAT RIGHT?

A THAT'S CORRECT.

Q AND WHEN YOU GOT IN THE PRECINCT, YOU SAT DOWN AND HE OPENED THE LUGGAGE FOR YOU?

A YES, HE DID.

Q AND YOU FOUND -- THIS LUGGAGE CONSISTED OF TWO BRIEFCASES, IS THAT RIGHT?

A THAT'S RIGHT.

Q MONEY WAS FOUND IN ONE, THOUGH, RIGHT?

A MONEY WAS FOUND IN ONE. THE OTHER MONEY WAS ON HIM.

Q AND APPROXIMATELY 58,000 SOME DOLLARS WERE FOUND IN THIS BRIEFCASE, IS THAT RIGHT?

A WELL, THE TOTAL WAS ABOUT, SOMEWHERE ABOUT --

Q SOMEWHERE ABOUT 58,000 SOMETHING?

A YES.

Q AND THIS MONEY WAS IN TWO PAPER BAGS, RIGHT?

A RIGHT.

Q AND IT WAS DIVIDED UP NO PARTICULAR WAY. I MEAN, THERE WASN'T -- IT WASN'T EVENLY DIVIDED, WAS IT?

A NO, IT WASN'T.

Q AND YOU COUNTED THE MONEY WITH MR. RIVERA?

A THAT'S CORRECT.

Q AND IT WAS AT THIS TIME THAT YOU DETERMINED THAT THIS MONEY WAS OR YOU BELIEVED THIS MONEY TO BE THE PROCEEDS OF A NARCOTICS TRANSACTION, IS THAT RIGHT?

A IT WAS AFTER MY INTERVIEW WITH HIM REGARDING THE, WHERE THE MONEY CAME FROM. THERE WAS NO PROOF OF OWNERSHIP, SALES FROM THE REPORT OF THE JEWELRY. IT COULD HAVE BEEN FROM A BANK ROBBERY. I DIDN'T KNOW.

Q IT COULD HAVE BEEN FROM ANYTHING BUT YOU BELIEVED IT WAS ILLEGALLY GOTTEN MONEY?

A BASICALLY FROM NARCOTICS.

Q WELL, YOU SAID IT COULD HAVE BEEN FROM A BANK ROBBERY.

A IT COULD HAVE BEEN ANYWHERE, BUT I'M JUST SAYING THAT WAS MY BELIEF, THAT IT WAS NARCOTICS.

Q YOU HAD A GUT FEELING IT WAS NARCOTICS, RIGHT, FROM BEING ON THE JOB AS LONG AS YOU HAVE?

A THAT'S CORRECT.

Q WHAT MADE YOU GIVE HIM $4,000.00 BACK?

A SOME OF THE MONEY WAS FOUND IN A DIFFERENT PLACE. HE TOLD ME THAT SOME OF IT WAS PERSONALLY OWNED MONEY. HE WAS ALLOWED TO --

Q TAKE BACK 4,000 OF THE 58,000 SOME DOLLARS.

HOW WERE YOU ABLE TO DETERMINE THAT THE 4,000 -- THIS WAS ALL CASH, RIGHT, ALL GREEN MONEY?

A RIGHT.

Q NOTHING WRITTEN ON ANY OF THE BILLS EXCEPT WHAT COMES FROM THE MINT, RIGHT?

A AS FAR AS I COULD DETERMINE. I COULDN'T SEE

ANYTHING WITH MY EYE.

Q THERE WAS NOTHING ON PART OF THE MONEY THAT SAID "THIS MONEY CAME FROM A DRUG TRANSACTION" AND NOTHING ON ANOTHER PART OF THE MONEY THAT SAID "THIS MONEY IS OKAY AND IT DIDN'T COME FROM A DRUG TRANSACTION." IS THAT RIGHT?

A NO.

Q AND YOU RETURNED SOME OF THE MONEY TO HIM?

A RIGHT.

Q AND YOU --

A THE MONEY THAT WAS RETURNED TO HIM WAS THE MONEY THAT WAS FOUND ON HIS PERSON.

Q AND YOU FIND SOME DISTINGUISHING FACTOR BETWEEN IT BEING FOUND ON HIS PERSON AND IT BEING FOUND IN A BRIEFCASE THAT BELONGED SOLELY TO HIM?

A WELL, BASICALLY I THINK I WAS SORT OF BEING NICE THAT DAY.

Q SO YOU JUST GAVE HIM BACK THE MONEY BECAUSE YOU WERE BEING NICE?

A AT THAT PARTICULAR --

Q I MEAN, YOU GAVE HIM SOME OF -- YOU THOUGHT IT WAS DRUG MONEY BUT YOU GAVE SOME OF IT BACK BECAUSE IT WAS A GOOD DAY FOR YOU?

A IT WASN'T A GOOD DAY FOR ME, BUT I'M SAYING THE MONEY WAS FOUND IN DIFFERENT PLACES --

Q THIS WAS ALL CASH, RIGHT?

A YES.
Q NONE OF IT WAS CO-MINGLED WITH NARCOTICS, RIGHT?
A NOT THAT I COULD DETERMINE.
Q AND MR. RIVERA WAS NEVER PLACED UNDER ARREST THAT DAY, WAS HE?
A NO, HE WAS NOT.
Q AS A MATTER OF FACT HE WAS LET FREE TO LEAVE?
A RIGHT. HE WAS NEVER ARRESTED.
Q AND HE LEFT?
A (NODS HEAD AFFIRMATIVELY.)
Q NOW, YOU TALKED ABOUT A KILO OF COKE IN 1981 -- I MEAN 1980 -- COSTING APPROXIMATELY $50,000.00, IS THAT RIGHT?
A BASICALLY ABOUT THAT FROM NEGOTIATIONS.
Q AND WHAT DO YOU BASE THIS ON? I MEAN --
A I BASE IT ON MY OWN EXPERIENCE OF WORKING UNDERCOVER, NEGOTIATING THE SALE PRICE --
Q DID YOU NEGOTIATE ANY SALES IN DECEMBER OF 1980?
A WELL, I CAN'T RECALL SPECIFICALLY, BUT WE ALWAYS --
Q NO, YOU SPECIFICALLY, YOURSELF, IN DECEMBER OF 1980, DID YOU NEGOTIATE ANY COCAINE SALES?
A I CAN'T RECALL RIGHT OFFHAND.
Q DO YOU RECALL -- SO DID YOU NEGOTIATE ANY COCAINE SALES IN NOVEMBER OF 1980?
A WHAT I WOULD HAVE TO DO IS PROBABLY GO BACK AND

LOOK AT SOME NOTES. I CAN'T TELL YOU EXACTLY --

Q WHEN WAS THE LAST TIME YOU WORKED IN CHICAGO?

A I HAVE NEVER WORKED IN CHICAGO. I HAVE BEEN ASSIGNED THERE. I HAVE PASSED THROUGH THERE AND HAVE DONE SOME WORK THERE.

Q YOU NEVER NEGOTIATED COCAINE DEALS IN CHICAGO?

A NO, I HAVE NOT.

Q NEVER WORKED UNDERCOVER IN CHICAGO?

A WELL, YOU KNOW, YOU ARE TALKING ABOUT LIKE GLEN PARK OR GLEN HEIGHTS, SOME OUTSIDE AREA, IN THE CLOSE BY PROXIMITY.

Q BUT NOT IN 1980?

A NO.

Q AND YOU NEVER PURCHASED ANY COCAINE IN CHICAGO IN 1980, DID YOU?

A NO.

Q NOW, YOU MADE A STATEMENT BEFORE THAT NO, THAT LEGITIMATE BUSINESSMEN DON'T CARRY CASH. IS THIS JUST YOUR PARTICULAR FEELING OR DO YOU HAVE ANY EVIDENCE THAT YOU BASE THIS ON?

A WELL, I DIDN'T SAY DIDN'T CARRY ANY CASH. I SAID THAT SUM OF MONEY, AND BASED SPECIFICALLY IN SMALL AMOUNTS. I HAVE NOT FOUND IT TO BE A VERY COMMON PRACTICE. I WILL PUT IT THAT WAY.

Q BUT YOU DON'T SAY THAT IT DOESN'T HAPPEN?

A I WON'T SAY IT NEVER HAPPENS, BUT --

Q NOW, HAVE YOU EVER ARRESTED ANYBODY WITH AN OUNCE OF COCAINE BEFORE?

A YES, I HAVE.

Q AND EVERYONE THAT YOU ARREST WITH AN OUNCE OF COCAINE, DO YOU PRESUME THAT THAT OUNCE CAME OFF OF A KILO THAT THEY HAD SOLD THE REST OF?

A IT DEPENDS ON THE CIRCUMSTANCES. YOU KNOW, EACH CASE IS, WOULD BE CONSIDERED DIFFERENT.

Q SO DEPENDING UPON WHAT YOU KNOW ABOUT A CASE, YOU SOMETIMES GET A FEELING OR SUSPICION, GUT REACTION, AS TO WHAT HAPPENED, RIGHT?

A BASICALLY, YES.

Q YOU TRY TO TAKE ALL THE FACTS YOU HAVE AT THE TIME AND TAKE YOUR BEST GUESS TO PUT TOGETHER A SET OF FACTS AS TO WHAT OCCURRED, IS THAT RIGHT?

A IF WE WANT TO CONTINUE INVESTIGATION, YES.

Q AND BASICALLY, THAT'S WHAT YOU DID HERE, YOU GOT TOGETHER THE FACT THAT THIS MAN IS LATIN AND ALL THE REST OF THE THINGS THAT WE TALKED ABOUT AND BASED ON THAT, YOU HAD TO FIGURE OUT SOMEHOW WHERE THIS $54,000.00 CAME FROM, AND YOU GUESSED THAT IT MUST HAVE COME FROM A DRUG DEAL IN CHICAGO, IS THAT RIGHT?

A I BASED MY DECISION ON MY EXPERIENCE THAT IT DID PROBABLY COME FROM NARCOTIC TRANSACTION.

Q NOW, MR. RIVERA TOLD YOU HE WAS, HE SOLD JEWELRY, IS THAT CORRECT, AND THAT'S WHERE THIS MONEY CAME FROM?

A YES, HE DID. HE DID TELL ME THAT.

Q AND HE GAVE YOU THE NAME OF A JEWELRY STORE, IS THAT RIGHT, OR A CARD?

A IT WAS LIKE A SALES CARD. IT DIDN'T HAVE HIS NAME ON IT.

Q BUT THE NAME OF THE JEWELRY STORE, IS THAT RIGHT?

A YES.

Q AND HE SAID HE SOLD THIS JEWELRY ON CONSIGNMENT, AND THIS IS WHAT HE GOT BACK FROM IT, IS THAT RIGHT?

A THAT'S CORRECT.

Q DID HE AT ANY TIME SHOW YOU A CONSIGNMENT RECEIPT?

A NO, HE DID NOT.

Q DID HE AT ANY TIME -- DID YOU FIND IN HIS BRIEFCASE A CONSIGNMENT RECEIPT?

A NO, I DID NOT.

Q DO YOU HAVE AN INVENTORY RECEIPT OF ALL THE ITEMS YOU FOUND IN THE BRIEFCASE BY ANY CHANCE? DID YOU MAKE ONE UP?

A I DID DID NOT MAKE UP AN INVENTORY LIST BECAUSE WE DID NOT TAKE ANYTHING FROM IT, BUT I DID GO THROUGH THE SUITCASE. I EVEN ASKED HIM IF HE HAD ANY PAPERS REGARDING SALES OF JEWELRY OR CONSIGNMENT OF JEWELRY.

Q SO THE ONLY THING YOU INVENTORIED FROM THE BRIEFCASE WAS THE MONEY?

A WELL, WE WENT THROUGH THE OTHER THINGS THAT WERE IN THERE --

Q BUT YOU DIDN'T WRITE THEM OUT?

A NO.

Q THE ONLY THING YOU WROTE DOWN WAS THE MONEY?

A RIGHT.

Q AND NOT EVEN ALL THE MONEY, RIGHT?

A WHAT DO YOU MEAN ALL THE MONEY?

Q WELL, YOU ONLY INVENTORIED $54,000.00 BUT YOU OBSERVED 58,000?

A WE ONLY GAVE HIM A RECEIPT FOR WHAT WE HAD TAKEN.

Q YOU SAID HE WAS VERY COOPERATIVE, IS THAT RIGHT?

A YES, HE WAS.

Q COULD YOU TELL ME WHAT THE -- I DON'T RECALL. THERE'S TWELVE FACTORS IN THE DRUG PROFILE, RIGHT? TEN?

A I DON'T KNOW.

Q OH, YOU DON'T KNOW?

A THERE ARE CERTAIN -- THERE CAN BE A CERTAIN NUMBER OF THINGS WE CAN USE BUT I DON'T THINK THAT THERE WOULD BE -- THERE COULD BE TWELVE AND COULD NOT.

Q AND BASICALLY YOU BASED YOUR DECISION ON WHERE THIS MONEY CAME FROM IN LARGE PART UPON THE DRUG COURIER PROFILE?

A BASED ON MY EXPERIENCE OF, AND THAT TYPE OF TRANSACTION, BASICALLY FROM THE, THAT PROFILE, YES, SIR.

Q AND YOU BASED A LOT OF IT ON THE FACT THAT MIAMI IS A DRUG CITY?

A IT WOULD BE CONSIDERED A SOURCE CITY.

Q AND CHICAGO IS CONSIDERED A DRUG CITY?

A A SOURCE CITY.

Q AND LOS ANGELES IS ALSO CONSIDERED A DRUG CITY?

A IT IS FOR CERTAIN TYPES OF DRUGS.

Q AND DETROIT IS?

A YES.

Q AND ATLANTA IS?

A YES.

Q AND DALLAS IS? RIGHT?

A RIGHT.

Q HOUSTON?

A WELL, IT COULD BE FOR CERTAIN TYPES OF DRUGS.

Q NEW ORLEANS? IS THAT RIGHT?

A IT'S POSSIBLE.

Q IN THE PROFILE -- I MEAN THESE ARE CITIES THAT HAVE BEEN TALKED ABOUT IN THE PROFILE, HAVE THEY NOT?

A WELL, I AM SURE THEY ALL HAVE BEEN AT SOME POINT IN TIME.

Q NEW YORK, RIGHT?

A YES.

Q AS A MATTER OF FACT, MOST LARGE METROPOLITAN CITIES HAVE BEEN CONSIDERED DRUG TRAFFICKING CENTERS IN TERMS OF THE PROFILE, HAVE THEY NOT?

A THERE'S A DIFFERENCE.

WE ARE TALKING ABOUT SOURCE CITIES AS OPPOSED TO DISTRIBUTION CITIES, SO IN SOME -- WHEN YOU USE THE WORD SOURCE, THEN I'M ASSUMING YOU ARE TALKING ABOUT IN ONE FASHION OR THE OTHER, IS THAT CORRECT?

Q RIGHT.

A OKAY, YES.

Q AND ANOTHER THING THAT'S CONSIDERED IN THE PROFILE, IS IT NOT, IS SOMEONE TRAVELING WITH NO LUGGAGE, RIGHT?

A POSSIBLE.

Q OR SOMEONE TRAVELING WITH A LITTLE BIT OF LUGGAGE, RIGHT?

A THAT'S CORRECT.

Q AND SOMEONE PAYING FOR THEIR TICKETS WITH CASH IS IN THE PROFILE, RIGHT?

A RIGHT.

Q AND HOW ABOUT TWO PEOPLE TRAVELING TOGETHER PRETENDING NOT TO BE TOGETHER?

A THAT WOULD BE AN ACTION BASED ON THE TWO PERSONS THAT YOU CAN DRAW INFERENCES FROM BUT NOT NECESSARILY LOOKING FOR THOSE KINDS OF THINGS.

Q HOW ABOUT TWO PEOPLE TRAVELING TOGETHER AND NOT MAKING ANY PRETENSE ABOUT THE FACT THAT THEY ARE TRAVELING TOGETHER?

A IT HAPPENS BOTH WAYS.

Q AS A MATTER OF FACT, THE DRUG PROFILE HAPPENS BOTH WAYS MOST OF THE TIME. IN OTHER WORDS, BASICALLY WHAT THE DRUG PROFILE DOES IS GIVE YOU A LIST OF THINGS TO LOOK AT AND YOU MAKE YOUR OWN DETERMINATION FROM THAT LIST. IS THAT CORRECT?

A BASED ON YOUR OWN EXPERIENCE. NONE OF THESE THINGS IN ITSELF COULD BE CONSTRUED BUT IF YOU PUT SO MANY OF THEM TOGETHER AND THEY FIT TOGETHER, YOU CAN DRAW AN INFERENCE BASED ON YOUR OWN EXPERIENCE, AND THAT'S BASICALLY WHAT I DID.

Q BASICALLY YOU TOOK -- NONE OF THE THINGS YOU SAW MR. RIVERA DO AS YOU SAID OR THAT YOU OBSERVED HIM IN AND OF THEMSELVES ARE ANY UNUSUAL OR ILLEGAL COURSE OF CONDUCT, IS THAT CORRECT?

A NOT ANY OF THEM ALONE, NO.

Q SO BUT WHEN YOU PUT ALL THESE THINGS TOGETHER YOU CAN SPECULATE THAT, BASED UPON YOUR EXPERIENCE YOU CAN SPECULATE OR PRESUME THAT IF I THINK, "LET'S SEE. IF HE DID THIS, THIS, AND THIS IN THIS SET OF CIRCUMSTANCES THEN MAYBE HE'S A DRUG TRAFFICKER." RIGHT?

A I COULD ASSUME THAT HE MAY BE CONDUCTING SOME

KIND OF CRIMINAL CONDUCT.

Q RIGHT.

A ENGAGED IN CRIMINAL CONDUCT.

Q AND THE PROFILE, THE PURPOSE OF THE PROFILE AS TO ALLOW YOU TO INQUIRE, IS THAT CORRECT?

A WHAT DO YOU MEAN?

Q WELL, THE PURPOSE OF THE PROFILE IS SO YOU WILL BE ABLE TO STOP PEOPLE AND TALK TO THEM BASICALLY IF YOU THINK THEY FIT IN SOME COURSE OF CRIMINAL CONDUCT?

A I DON'T THINK YOU NEED A PROFILE FOR THAT. IF YOU THINK THERE'S ENOUGH PROBABLE CAUSE TO SUSPECT SOMETHING, YOU DON'T NEED A PROFILE TO STOP THEM.

Q THERE ARE PEOPLE WHO WILL FIT -- QUOTE, UNQUOTE -- THE PROFILE AND ARE DOING ABSOLUTELY NOTHING WRONG, IS THAT CORRECT?

A THAT'S CORRECT.

MR. MUSLIN: I HAVE NOTHING FURTHER.

THE COURT: DO YOU HAVE ANY REDIRECT?

MS. McCLURE: JUST ONE OR TWO QUESTIONS, YOUR HONOR.

REDIRECT EXAMINATION

BY MS. McCLURE:

Q MR. CHAPMAN, DID YOU BASE YOUR DECISION TO SEIZE THE CURRENCY AT ALL ON THE FACT THAT THE COCAINE WAS, YOU BELIEVE COCAINE WAS THE SUBSTANCE CONTAINED IN THE TWO ITEMS